

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: John Butler	Team: Squad #5	CCRB Case #: 201603962	<input checked="" type="checkbox"/> Force <input checked="" type="checkbox"/> Abuse	<input checked="" type="checkbox"/> Discourt. <input checked="" type="checkbox"/> O.L.	<input type="checkbox"/> U.S. <input checked="" type="checkbox"/> Injury
Incident Date(s) Saturday, 05/07/2016 9:45 PM	Location of Incident: 1824 Weeks Ave, en-route to the 46 PCT, and inside the 46th PCT stationhouse		Precinct: 46	18 Mo. SOL 11/7/2017	EO SOL 11/7/2017
Date/Time CV Reported Mon, 05/09/2016 1:59 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 05/09/2016 1:59 PM		

Complainant/Victim	Type	Home Address
[REDACTED]	[REDACTED]	[REDACTED]

[illegible]

Subject Officer(s)	Shield	TaxID	Command
1. POM Kevin Martin	24921	941068	046 PCT
2. POM Konti Markvukaj	07228	956883	046 PCT
3. An officer			046 PCT
4. POM Valdrin Nikqi	07009	954177	046 PCT
5. SGT Laura Barbato	270	944350	046 PCT
6. SGT Jorge Carvajal	03493	932427	046 PCT
7. POM Johnny Chalen	09575	947694	046 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. Officers			046 PCT
2. POM Joshua Healy	24570	954923	046 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Konti Markvukaj	Abuse: At 1824 Weeks Avenue in the Bronx, Police Officer Konti Markvukaj stopped § 87(2)(b)	

Officer(s)	Allegation	Investigator Recommendation
B.POM Kevin Martin	Abuse: At 1824 Weeks Avenue in the Bronx, Police Officer Kevin Martin stopped § 87(2)(b)	
C.POM Kevin Martin	Abuse: At 1824 Weeks Avenue in the Bronx, Police Officer Kevin Martin questioned § 87(2)(b)	
D.POM Konti Markvukaj	Abuse: At 1824 Weeks Avenue in the Bronx, Police Officer Konti Markvukaj questioned § 87(2)(b)	
E.POM Kevin Martin	Discourtesy: At 1824 Weeks Avenue in the Bronx, Police Officer Kevin Martin spoke discourteously to § 87(2)(b)	
F.POM Kevin Martin	Force: At 1824 Weeks Avenue in the Bronx, Police Officer Kevin Martin used physical force against § 87(2)(b)	
G.POM Kevin Martin	Discourtesy: En route to the 46th Precinct stationhouse, Police Officer Kevin Martin spoke discourteously to § 87(2)(b)	
H.POM Kevin Martin	Off. Language: En-route to the 46th Precinct stationhouse, Police Officer Kevin Martin made remarks to § 87(2)(b) based upon race.	
I.POM Kevin Martin	Off. Language: En-route to the 46th Precinct stationhouse, Police Officer Kevin Martin made remarks to § 87(2)(b) based upon the gender of § 87(2)(b)'s mother.	
J.POM Konti Markvukaj	Abuse: Inside the 46th Precinct stationhouse, Police Officer Konti Markvukaj strip-searched § 87(2)(b)	
K.POM Kevin Martin	Abuse: Inside the 46th Precinct stationhouse, Police Officer Kevin Martin strip-searched § 87(2)(b)	
L.POM Kevin Martin	Discourtesy: Inside the 46th Precinct stationhouse, Police Officer Kevin Martin spoke discourteously to § 87(2)(b)	
M.POM Kevin Martin	Force: Inside the 46th Precinct stationhouse, Police Officer Kevin Martin used physical force against § 87(2)(b)	
N.POM Konti Markvukaj	Force: Inside the 46th Precinct stationhouse, Police Officer Konti Markvukaj hit § 87(2)(b)'s head against a wall.	
O. An officer	Off. Language: Inside the 46th Precinct stationhouse, an officer made remarks to § 87(2)(b) based upon race.	
P. An officer	Abuse: Inside the 46th Precinct stationhouse, an officer threatened § 87(2)(b) with the use of force.	
Q.SGT Jorge Carvajal	Force: Inside the 46th Precinct stationhouse, Sergeant Jorge Carvajal used physical force against § 87(2)(b)	
§ 87(2)(g), § 87(4-b)		
§ 87(2)(g), § 87(4-b)		
§ 87(2)(g), § 87(4-b)		
§ 87(4-b), § 87(2)(g)		
§ 87(4-b), § 87(2)(g)		

### Case Summary

On May 7, 2016, Sgt. Jorge Carvajal of the 46<sup>th</sup> Precinct filed this complaint with IAB via phone, generating log number 16-16171. On May 9, 2016, § 87(2)(b) filed this complaint with the CCRB via phone.

On May 7, 2016, at approximately 9:45 p.m., PO Kevin Martin and PO Konti Markvukaj of the 46<sup>th</sup> Precinct stopped § 87(2)(b) inside of Riva's Deli at 1824 Weeks Avenue in the Bronx (**Allegations A and B**). PO Martin allegedly asked § 87(2)(b) if he had marijuana on his person, and both PO Markvukaj and PO Martin asked § 87(2)(b) if he had previously been arrested and if he had any active warrants (**Allegations C and D**). PO Martin allegedly said, "Shut the fuck up" to § 87(2)(b) and commented that § 87(2)(b)'s friends were a "bunch of pussies" (**Allegation E**). PO Martin and PO Markvukaj discovered an active bench warrant for § 87(2)(b) and they arrested him. § 87(2)(b) resisted the officers' efforts to place him in their police vehicle, and PO Martin allegedly punched § 87(2)(b) twice in the groin (**Allegation F**).

En route to the 46<sup>th</sup> Precinct stationhouse, PO Martin referred to § 87(2)(b) as a "pussy" (**Allegation G**). PO Martin referred to § 87(2)(b)'s mother as "Shaquisha" in a derogatory reference to § 87(2)(b)'s ethnicity as a black male (**Allegation H**). PO Martin also referred to § 87(2)(b)'s mother as a "whore" (**Allegation I**).

Upon their arrival at the 46<sup>th</sup> Precinct stationhouse, PO Martin and PO Markvukaj escorted § 87(2)(b) into the cell area where they attempted to pull down § 87(2)(b)'s pants to conduct a strip search without supervisory approval (**Allegations J and K**). § 87(2)(b) prevented the officers from pulling down his pants at which time the officers brought him into the bathroom inside the cell area. PO Martin said, "You're my bitch," "Suck my dick," and used the word "fuck" in various contexts while speaking with § 87(2)(b) (**Allegation L**). PO Martin completed the strip search inside the bathroom, and he allegedly made skin-to-skin contact with § 87(2)(b)'s buttocks and genitals (**Subsumed within Allegation K**). An IAB referral (Case 201604450) was generated in regards to § 87(2)(b)'s allegation that PO Martin made skin-to-skin contact with him during the strip-search. PO Martin recovered a bag of marijuana during the strip search. PO Martin then punched § 87(2)(b)'s right eye once, the back of his head four times, the left side of his ribs four times, and the right side of his ribs twice (**Allegation M**). PO Markvukaj allegedly slammed § 87(2)(b)'s head into a wall during the struggle (**Allegation N**). Numerous additional police officers entered the cell area during the struggle, including Sgt. Carvajal; PO Joshua Healy; and PO Johnny Chalen of the 46<sup>th</sup> Precinct. An unidentified officer allegedly referred to § 87(2)(b) as a "nigger" and threatened to use a taser against him (**Allegations O and P**). § 87(2)(b) sustained bruising to his back; the back of head; and the right side of his ribs as a result of PO Martin's punches. § 87(2)(b) sustained swelling to the right side of his head from PO Markvukaj striking his head against the wall.

The officers placed § 87(2)(b) in handcuffs, and Sgt. Carvajal; PO Markvukaj; PO Chalen; and PO Healy escorted § 87(2)(b) to an isolated cell area on the opposite side of the stationhouse. In the secondary cell area, Sgt. Carvajal allegedly kicked § 87(2)(b) in the groin and punched the right side of his lip twice causing a laceration to his bottom lip requiring three stitches (**Allegation Q**). § 87(2)(b) was transported to § 87(2)(b) Hospital where he received three stitches to treat the laceration to his lip. § 87(2)(b) was arrested for assaulting a police officer, possession of marijuana, and disorderly conduct. § 87(2)(b)'s assault charge was dismissed in court (BR 01).

§ 87(2)(g)

There is video footage of the incident obtained from security cameras at Riva's Deli at 1824 Weeks Avenue in the Bronx. The relevant 6:10 portion of the video is attached below (BR 07; file 201603962\_20160725\_1111). An unidentified civilian witness, who refused to identify himself, also recorded the incident on his personal cell phone, and this unidentified witness provided the video to the undersigned investigator when field work was conducted to 1824 Weeks Avenue. The relevant 00:53 portion of the cell phone video is attached below (BR 08; file 201603962\_20160725\_1123). The full versions of the above referenced video files can be found in IAs 52-55 (BR 09-10). There is no video footage of the allegations en-route to the 46<sup>th</sup> Precinct stationhouse and inside the stationhouse.



201603962\_20160725\_1111\_DM.mp4



201603962\_20160725\_1123\_DM.mp4

### **Mediation, Civil and Criminal Histories**

This case was unsuitable for mediation due to § 87(2)(b)'s arrest and injuries. As of July 12, 2016, § 87(2)(b) had not filed a notice of claim in regards to this incident (BR 11). § 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

### **Civilian and Officer CCRB Histories**

This is the first CCRB complaint filed by § 87(2)(b) (BR 13).

This is PO Markvukaj's first CCRB complaint in his two year tenure as an NYPD officer.

Sgt. Carvajal has been a member of the NYPD for 13 years and has been the subject of three prior cases involving 10 allegations, none of which were substantiated. § 87(2)(g)

§ 87(2)(g)

PO Martin has been a member of the NYPD for 10 years and has been the subject of 30 prior CCRB complaints involving 102 allegations. § 87(2)(g)

§ 87(2)(g)

PO Martin has 15 prior physical force allegations. One of these prior force allegations was substantiated with charges recommended in case 201204718. Ten of PO Martin's 15 prior physical force allegations were unsubstantiated or truncated.

PO Martin has 11 prior improper stop allegations, three of which were substantiated. Command discipline was recommended for PO Martin's improper stop in case 201101547, but no disciplinary action was enforced because the case exceeded the statute of limitations. Charges were recommended for PO Martin's improper stop in case 201114083, but the NYPD declined to enforce discipline in that case. Charges were also recommended in case 201205296, and a final disciplinary decision is pending the outcome of an administrative trial. Eight of PO Martin's 11 improper stop allegations were unsubstantiated or truncated.

PO Martin has 13 prior improper search allegations, including three improper strip-search allegations. Eight of these 13 complaints alleged that PO Martin removed a civilian's clothing in public and § 87(2)(g), § 87(2)(a) CVR § 50-b (See cases 201100868, 201101562, 201106196, 201202439, 201205296, 201505846, 201600123, and 201605063). Seven of these eight allegations were unsubstantiated or truncated, and the improper search

allegation in case 201205296 was substantiated with charges recommended. The investigation also determined that PO Martin provided a false official statement in case 201205296 when he denied conducting an improper search that was captured on video. PO Martin's five other improper search allegations were either unsubstantiated or truncated. § 87(2)(g)

PO Martin has 17 prior discourtesy and offensive language allegations. One of these discourtesy allegations was substantiated in case 201205296 with charges recommended. Thirteen of PO Martin's discourtesy and offensive language allegations were either truncated or unsubstantiated. Two of PO Martin's prior offensive language comments were alleged to be directed at civilians' mothers in a manner similar to the allegations in this case. In case 201011220, PO Martin allegedly said "fuck your mother" and commented that the complainant's mother "had a little faggot like him." In case 201101547, PO Martin allegedly referred to the complainant's mother as a "whore" § 87(2)(g)

### **Potential Issues**

There were numerous unidentified witnesses to the allegations that occurred at 1824 Weeks Avenue in the Bronx. § 87(2)(b) could not identify any of these witnesses. Field work was conducted at the incident location, and canvassing letters were left at the location. One witness, § 87(2)(b) was identified during field work, but he did not want to provide a statement at that time. § 87(2)(b) provided his address and phone number but attempts to contact him were unsuccessful.

There were 14 potential civilian witnesses to the allegations inside the 46<sup>th</sup> Precinct stationhouse. These witnesses were prisoners in the cell area at the time of the incident. Verified statements were obtained from three of these witnesses, § 87(2)(b) and § 87(2)(b). Unverified statements were obtained from two of these witnesses, § 87(2)(b) and § 87(2)(b). § 87(2)(b) decided that he did not want to cooperate with the investigation after providing a partial statement. § 87(2)(b) provided a phone statement, missed one interview, and failed to respond to subsequent contact attempts.

### **Findings and Recommendations**

**Allegation A – Abuse of Authority: At 1824 Weeks Avenue in the Bronx, Police Officer Konti Markvukaj stopped § 87(2)(b)**

**Allegation B – Abuse of Authority: At 1824 Weeks Avenue in the Bronx, Police Officer Kevin Martin stopped § 87(2)(b)**

**Allegation C – Abuse of Authority: At 1824 Weeks Avenue in the Bronx, Police Officer Kevin Martin questioned § 87(2)(b)**

**Allegation D – Abuse of Authority: At 1824 Weeks Avenue in the Bronx, Police Officer Konti Markvukaj questioned § 87(2)(b)**

It is undisputed that PO Markvukaj and PO Martin stopped § 87(2)(b) inside Riva's Deli at 1824 Weeks Avenue in the Bronx.

§ 87(2)(b) stated that he exited a multi-story apartment complex at 1824 Weeks Avenue and observed PO Martin and PO Markvukaj standing outside (BR 01). § 87(2)(b) walked into Riva's Deli, which was also located at 1824 Weeks Avenue, and purchased a soda. PO Martin and PO Markvukaj entered the deli behind § 87(2)(b) and PO Martin told § 87(2)(b) to stop and

provide his identification. PO Martin also allegedly asked § 87(2)(b) if he had marijuana on his person, and § 87(2)(b) told PO Martin that he did have marijuana on him.

According to PO Martin and PO Markvukaj, they responded to 1824 Weeks Avenue after receiving a radio call of a dispute between a girlfriend and boyfriend at the location (BR 30-31). No further information was provided in the call. The officers arrived on the scene and asked the 911 operator to check the call-back number for the 911 call. The operator did so, but there was no response. At that time, the officers saw § 87(2)(b) exit the apartment building and walk into Riva's Deli. The officers stated that they followed § 87(2)(b) inside the deli and stopped him to determine whether he was associated with the dispute reported in the 911 call. PO Markvukaj stated that he did not have any reason to believe that § 87(2)(b) was associated with the 911 call, and PO Martin stated that he only held that belief because § 87(2)(b) exited from the apartment complex at the location reported in the call. The officers took § 87(2)(b)'s identification and immediately used their department cell phones to search his name for warrants. PO Martin denied that he asked whether § 87(2)(b) had marijuana on his person, and PO Markvukaj did not recall whether PO Martin asked that question. PO Markvukaj stated that both he and PO Martin asked § 87(2)(b) whether he had previously been arrested and whether he had any active warrants.

The 911 recording from the incident confirmed that there was a 911 call of a dispute at 1824 Weeks Avenue (BR 14). The recording revealed that PO Martin and PO Markvukaj initially responded to the call but that the dispatcher told them to disregard the job because another patrol sector took the job as a pickup. PO Martin and PO Markvukaj confirmed over the radio that they received that message. The recording also revealed that the officers did not ask the operator to check the call back number and that PO Martin reported over the radio that he stopped § 87(2)(b) as a result of a pickup, not a radio call.

An officer must have reasonable suspicion to believe that a person has committed, is committing, or is about to commit a crime in order to stop that person (BR 15). People v. DeBour, 40 N.Y.2d 201 (1976). An officer must have founded suspicion of criminality to ask accusatory questions (BR 16). People v. Hollman, 79 N.Y.2d 181 (1992).

§ 87(2)(b), § 87(2)(g)

**Allegation E – Discourtesy: At 1824 Weeks Avenue in the Bronx, Police Officer Kevin Martin spoke discourteously to § 87(2)(b)**

**Allegation F – Force: At 1824 Weeks Avenue in the Bronx, Police Officer Kevin Martin used physical force against § 87(2)(b)**

According to § 87(2)(b) PO Martin said, “Your friends are a bunch of pussies,” and “Shut the fuck up,” while speaking with § 87(2)(b) in the deli. During that conversation, Sgt. Laura Barbato; PO Johnny Chalen; and PO Valdrin Nikqi of the 46<sup>th</sup> Precinct arrived on the scene. PO Martin and PO Markvukaj arrested § 87(2)(b) for his warrant and placed him in handcuffs. § 87(2)(b) resisted the officers’ efforts to place him into their police vehicle by holding his ground at which time PO Martin allegedly punched § 87(2)(b) twice in the groin.

PO Martin denied making the discourteous comments alleged by § 87(2)(b) and he denied using profanity toward § 87(2)(b). The other officers either did not hear or did not recall whether PO Martin made the alleged comments. PO Martin and Sgt. Barbato denied that PO Martin punched § 87(2)(b) in the groin, and PO Markvukaj; PO Chalen; and PO Nikqi either did not recall or did not see whether PO Martin did so (BR 34-36).

The video footage of the incident did not have audio and did not record PO Martin’s alleged discourtesies. The video footage also did not clearly show whether or not PO Martin punched § 87(2)(b) in the groin because the footage was dark and the camera was obstructed by the officers’ car door.

§ 87(2)(b), § 87(2)(g)

**Allegation G – Discourtesy: En route to the 46<sup>th</sup> Precinct stationhouse, Police Officer Kevin Martin spoke discourteously to § 87(2)(b)**

**Allegation H – Offensive Language: En route to the 46<sup>th</sup> Precinct stationhouse, Police Officer Kevin Martin made remarks to § 87(2)(b) based upon race.**

**Allegation I – Offensive Language: En route to the 46<sup>th</sup> Precinct stationhouse, Police Officer Kevin Martin made remarks to § 87(2)(b) based on the gender of § 87(2)(b)’s mother.**

During the car ride to the stationhouse, § 87(2)(b) stated that PO Martin referred to him as a “pussy” and told him to “man up because it was just a warrant.” PO Martin then told § 87(2)(b) that his mother’s name was “§ 87(2)(b) § 87(2)(b) stated that his mother’s name was not “§ 87(2)(b) and he interpreted PO Martin’s comment as a racial slur. PO Martin also referred to § 87(2)(b)’s mother as a “whore.”

PO Martin denied making any of the comments alleged by § 87(2)(b) and he denied using profanity or offensive language during the car ride. PO Markvukaj did not recall whether PO Martin made any of the comments alleged by § 87(2)(b) and he did not recall whether PO Martin used profanity or offensive language during the car ride to the stationhouse.

Officers must be courteous and respectful (BR 17). Patrol Guide Procedure 203-09. Officers are prohibited from using discourteous or disrespectful remarks regarding another person’s ethnicity, race, or gender (BR 18). Patrol Guide Procedure 203-10.

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

**Allegation J – Abuse of Authority: Inside the 46<sup>th</sup> Precinct stationhouse, Police Officer Konti Markvukaj strip-searched § 87(2)(b)**

**Allegation K – Abuse of Authority: Inside the 46<sup>th</sup> Precinct stationhouse, Police Officer Kevin Martin strip-searched § 87(2)(b)**

It is undisputed that PO Martin and PO Markvukaj searched § 87(2)(b) inside the bathroom in the stationhouse cell area. It is undisputed that the bathroom door was open during the entire search and that the doorway was approximately one foot away from the cells.

According to § 87(2)(b) PO Markvukaj and PO Martin brought him to the front desk upon their arrival at the stationhouse. The desk sergeant, Sgt. Carvajal, did not discuss the possibility of strip-searching § 87(2)(b) with the officers. PO Markvukaj and PO Martin then escorted § 87(2)(b) into the stationhouse cell area, unlocked § 87(2)(b)'s handcuffs, and tried to pull down § 87(2)(b)'s pants. § 87(2)(b) pulled his pants up to prevent the officers from strip-searching him. The officers then brought § 87(2)(b) into the cell area bathroom where PO Martin instructed § 87(2)(b) to remove his pants. § 87(2)(b) did so, and PO Martin reached inside § 87(2)(b)'s underwear, swiped his hand between § 87(2)(b)'s buttocks, and grabbed § 87(2)(b)'s testicles. § 87(2)(b) stated that his pants were around his ankles with his boxers exposed when he was removed from the bathroom after his strip-search.

PO Martin and PO Markvukaj denied that they strip searched § 87(2)(b) and both officers stated that there was no reason to strip-search him. PO Markvukaj and PO Martin stated that they did not obtain supervisory approval to strip-search § 87(2)(b) and Sgt. Carvajal stated that he did not authorize a strip-search of § 87(2)(b). PO Markvukaj stated that he found marijuana on § 87(2)(b) while conducting a regular search of § 87(2)(b)'s person. Sgt. Carvajal; PO Healy; and PO Chalen entered the cell area after the alleged strip search, but these officers either did not recall or denied that § 87(2)(b)'s underwear was exposed at that time (BR 32-34).



§ 87(2)(b)'s strip-search was not documented in the officers' memo books, the command log, or § 87(2)(b)'s arrest report (BR 19-22).

§ 87(2)(b) and § 87(2)(b) were prisoners in the cell area at the time that § 87(2)(b) was allegedly strip-searched (BR 02-05). None of these witnesses had any prior relationship with § 87(2)(b) and none knew him by name. § 87(2)(b) observed PO Martin and PO Markvukaj escort § 87(2)(b) into the cell area and attempt to pull down his pants. § 87(2)(b) saw § 87(2)(b) once the strip-search was underway, and he observed that § 87(2)(b)'s pants were lowered slightly around his thighs. § 87(2)(b) observed the officers bring § 87(2)(b) into the bathroom, but his view of the incident was then obscured by the cell bars. § 87(2)(b) next saw § 87(2)(b) when the officers brought him out of the bathroom, and § 87(2)(b) stated that § 87(2)(b)'s pants were down around his knees at that time. § 87(2)(b) heard § 87(2)(b) complain that the officers "touched his genitals" and "fondled his anus."

A strip search of a prisoner may not be conducted routinely in connection with an arrest. Strip searches may only be conducted with the knowledge and approval of the arresting officer's immediate supervisor. A strip search may only be conducted when the arresting officer reasonably suspects that weapons, contraband, or evidence may be concealed upon the person in such a manner that they may not be discovered by previous search methods (BR 23). Patrol Guide Procedure 208-05.

§ 87(2)(b), § 87(2)(g)

[REDACTED]

**Allegation L – Discourtesy: Inside the 46<sup>th</sup> Precinct stationhouse, Police Officer Kevin Martin spoke discourteously toward § 87(2)(b)**

According to § 87(2)(b) PO Martin threw one of his shoes in the bathroom and allegedly said, "You're my bitch. Pick it up." § 87(2)(b) also alleged that PO Martin said, "You're my bitch. Suck my dick" during the strip search.

PO Martin denied § 87(2)(b)'s allegations, and he denied using profanity toward § 87(2)(b). PO Markvukaj did not recall whether PO Martin made the comments alleged by § 87(2)(b) and PO Markvukaj did not recall whether PO Martin used profanity.

§ 87(2)(b) and § 87(2)(b) heard PO Martin use the word "fuck" toward § 87(2)(b) in various contexts while strip-searching him. § 87(2)(b) was also a prisoner in the cell area at the time of the incident, and he also heard PO Martin use profanity. These witnesses did not remember or hear everything that PO Martin said toward § 87(2)(b).

Officers must be courteous and respectful. Patrol Guide Procedure 203-09.

§ 87(2)(b), § 87(2)(g)

**Allegation M – Force: Inside the 46<sup>th</sup> Precinct stationhouse, Police Officer Kevin Martin used physical force against § 87(2)(b)**

According to § 87(2)(b) he bent down to put on his clothes after his strip-search at which time PO Martin punched his right eye once, the back of his head four times, the left side of his ribs four times, and the right side of his ribs twice. § 87(2)(b) stated that he did not take any action besides bending down to pick up his clothes prior to being punched, and he stated that he did not swing at any officer. While PO Martin punched him, § 87(2)(b) stated that he “balled up” by lowering his chest to his knees and raising his open palms in front of his face. PO Markvukaj grabbed § 87(2)(b) during the struggle, and § 87(2)(b) moved his body back and forth to escape from the officers. § 87(2)(b) did not take any other action besides “balling up” and moving his body back and forth. Approximately 10 police officers in uniform and plainclothes, including PO Chalen; PO Healy; and Sgt. Carvajal, entered the cell area during the struggle. These officers separated PO Martin and § 87(2)(b) and they placed § 87(2)(b) in handcuffs. § 87(2)(b) sustained bruising to his back, to the back of head, and to the right side of his ribs as a result of PO Martin’s punches. § 87(2)(b) later noticed that he sustained a laceration to the right side of his lip (Discussed in **Allegation Q**).

PO Martin and PO Markvukaj stated that § 87(2)(b) punched PO Martin in the groin after the officers searched him, and both officers grabbed § 87(2)(b)’s arms to restrain him. PO Markvukaj stated that § 87(2)(b) moved his body and arms back and forth to escape the officers’ grip. PO Martin stated that § 87(2)(b) punched and kicked the officers repeatedly. Sgt. Carvajal and PO Healy entered the cell area during the struggle. Sgt. Carvajal claimed that § 87(2)(b) punched PO Martin repeatedly. PO Healy stated that § 87(2)(b) moved his arms back and forth to escape from the officers, but PO Healy did not recall seeing § 87(2)(b) swing at any officer.

PO Martin stated that he punched the small of § 87(2)(b)’s back only once during the incident in order to overcome his resistance. PO Martin denied punching § 87(2)(b) at any other point during the incident, and PO Markvukaj did not recall seeing PO Martin punch § 87(2)(b). Both officers stated that they pulled § 87(2)(b) to the ground to place him in handcuffs. Neither Sgt. Carvajal nor PO Healy saw whether or not PO Martin punched § 87(2)(b). None of the officers observed any injuries on § 87(2)(b). PO Martin sustained a sprained right wrist during the altercation, but he did not know how he sustained that injury. § 87(2)(b) was charged with assaulting a police officer, but the assault charge was dismissed.

§ 87(2)(b) and § 87(2)(b) observed the altercation from their respective cells. § 87(2)(b) and § 87(2)(b) saw PO Martin and PO Markvukaj escort § 87(2)(b) into the cell area, and they stated that § 87(2)(b) did not assault or swing at any officer prior to PO Martin’s use of force against him. § 87(2)(b) and § 87(2)(b) observed PO Martin punch § 87(2)(b) multiple times all over his body. These witnesses stated that § 87(2)(b) did not swing at any officer during the struggle and that § 87(2)(b) did not resist

the officers in any way besides moving his body back and forth in effort to avoid being punched. § 87(2)(b)'s view of the altercation was obstructed by the cell bars, but he heard what sounded like multiple strikes make contact with § 87(2)(b) and § 87(2)(b) observed that § 87(2)(b) was bleeding profusely from his face at the conclusion of the altercation.

§ 87(2)(b) was transported by EMS to § 87(2)(b) Hospital on the date of the incident. According to his medical records, § 87(2)(b) complained that he was punched by police officers in his head and chest multiple times. § 87(2)(b)'s medical records confirmed that he sustained a laceration to his lip requiring three stitches. The medical records also confirmed that § 87(2)(b) sustained rib, back, and chest pain for which he was prescribed pain medication.

Officers must use the minimum necessary force to overcome resistance (BR 25). Patrol Guide Procedure 203-11.

§ 87(2)(b), § 87(2)(g)

[REDACTED]

**Allegation N: Inside the 46<sup>th</sup> Precinct stationhouse, Police Officer Konti Markvukaj hit § 87(2)(b)'s head against a wall.**

**Allegation O: Inside the 46<sup>th</sup> Precinct stationhouse, an officer made remarks to § 87(2)(b) based on race.**

**Allegation P: Inside the 46<sup>th</sup> Precinct stationhouse, an officer threatened § 87(2)(b) with the use of force.**

§ 87(2)(b) alleged that PO Markvukaj grabbed his head and slammed it into a wall of the bathroom during the above referenced altercation. § 87(2)(b) alleged that an officer referred to § 87(2)(b) as a “nigger” during the altercation, but § 87(2)(b) could not effectively describe this officer. § 87(2)(b) alleged that an officer threatened to use a taser against § 87(2)(b) but he did not see the officer who made that comment. § 87(2)(b) did not allege that any officer referred to him as a “nigger” or threatened to use a taser against him. None of the witnesses testified that PO Markvukaj struck § 87(2)(b)'s head against a wall.

PO Markvukaj denied slamming § 87(2)(b)'s head into a wall, and no other officer saw PO Markvukaj do so. The officers variously denied, did not recall, or did not hear any officer refer to § 87(2)(b) as a “nigger” or threaten to use a taser against him.

§ 87(2)(b), § 87(2)(g)

**Allegation Q: Force: Inside the 46<sup>th</sup> Precinct stationhouse, Sergeant Jorge Carvajal used physical force against § 87(2)(b)**

It is undisputed that § 87(2)(b) was handcuffed and escorted to an isolated holding cell on the opposite side of the stationhouse after the officers restrained him.

§ 87(2)(b) alleged that PO Markvukaj, PO Chalen, PO Healy, and possibly one other officer held his arms while Sgt. Carvajal kicked him in the groin and punched him twice in the face. § 87(2)(b) first noticed the laceration to his lower lip after Sgt. Carvajal punched him.

Sgt. Carvajal, PO Markvukaj, PO Chalen, and PO Healy denied § 87(2)(b)'s allegations, and Sgt. Carvajal stated that he did not use any other physical force against § 87(2)(b). There were no other known witnesses to these allegations.

§ 87(2)(b), § 87(2)(g)

§ 87(2)(g), § 87(4-b)

§ 87(4-b), § 87(2)(g)

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Squad:

Investigator: \_\_\_\_\_  
Signature Print Date

Squad Leader: \_\_\_\_\_  
Title/Signature Print Date

Reviewer: \_\_\_\_\_  
Title/Signature Print Date